Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

DOUGLAS J. CRAWFORD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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24 pp

Brief Introductory Statement: The U.S. Supreme Court in Freytag v. Commissioner of Internal Revenue, 501 U.S. 868 (1991) held that the authority Congress granted to the Chief Judge of the United States Tax Court to appoint Special Trial Judges under 26 U.S.C. § 7443A(b)(4) does not violate Article II, § 2, clause 2 of the U.S. Constitution. However, Freytag did not answer the all-encompassing separation of powers question(s) presented herein.

QUESTION PRESENTED #1: Does a Special Trial Judge's ability to hear and decide cases, under 26 U.S.C. § 7443A (c), at the same level as U.S. District Court Judges threaten the institutional integrity of the judicial branch by cloaking the work of an Article I inferior officer as that of an Article III officer?

QUESTION PRESENTED # 2: Does an Article I inferior officer have the jurisdictional power to decide Petitioner's separation of powers question?

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Jurisdictional Statement: This timely filed petition for writ of certiorari is based on the published opinion in Crawford v. C.I.R., Docket No. 00-70173; Tax Ct. No. 97-14736, from the United States Court of Appeals for the Ninth Circuit filed on September 20, 2001. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

Statute under Constitutional Scrutiny: 26 U.S.C. § 7443A (c) [Special Trial Judges] Authority to make court decision. The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), or (3) of subsection (b), subject to such conditions and review as the court may provide.

I. CONCISE STATEMENT OF THE CASE

Petitioner, Douglas J. Crawford ("Petitioner") was issued several Notices of Deficiencies by the Commissioner of the Internal Revenue ("Respondent") for taxable years ending December 31, 1991 and December 31, 1993. Petitioner timely sought the intervention of the U.S. Tax Court to independently determine the amount of tax Petitioner owed, if any, for both years.

On March 9, 1998, Petitioner's case was called from the calendar for the Trial Session of the U.S. Tax Court at San Diego, California before the Honorable Special Trial Judge Norman H. Wolfe ("Wolfe"). Petitioner objected to Wolfe's

jurisdiction to **decide**[1] Petitioner's case based on the separation of powers doctrine. In addition, Petitioner objected to the assignment of a Special Trial Judge to Petitioner's case as violating the Equal Protection and Due Process Clauses of the U.S. Constitution. Finally, Petitioner objected to Wolfe's jurisdiction to decide the foregoing constitutional questions. After hearing the aforementioned jurisdictional objections, Wolfe scheduled the case for trial on March 11, 1998.

On March 11, 1998, Petitioner restated his objections from March 9, 1998. The objections

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[1] Petitioner's separation of powers objection has always been concerned with the constitutionality of 26 U.S.C. § 7443A (c), namely the ability to ***decide*** cases, not with the constitutionality of 26 U.S.C. § 7443A(a) or (b) which have to do with appointment.

were also submitted in written form and accepted as part of the record. The facts of the case were submitted as fully stipulated. On October 29, 1999, Wolfe issued a memorandum opinion, T.C. Memo 1999-361, and after a timely filed motion for reconsideration was denied, on January 7, 2000, Wolfe entered a final decision in Docket No. 14736-97.

On January 19, 2000, Petitioner filed a timely notice of appeal under 26 U.S.C. § 7482 (a) to the United States Court of Appeals for the Ninth Circuit. On September 20, 2001, the United States Court of Appeals for the Ninth Circuit issued their opinion affirming the judgment of Special Trial Judge Wolfe.

II. WITH THE HELP OF FREYTAG, CONGRESS WILL CONTINUE TO SAP THE JUDICIAL POWER FROM ARTICLE III

In 1998, Congress amended § 7443A to increase the amount of deficiency that special trial judges could decide from $10,000 to $50,000. The amount now mirrors the amount required to invoke U.S. District Court jurisdiction. More importantly, this increased amount necessarily dictates more litigants will have their cases heard and decided by special trial judges.

Unless an appeal is taken, a litigant's impression of a strong and independent federal judiciary will end at the trial stage. Unfortunately, a litigant's impression of U.S. Tax Court can hardly

be said to be that of the federal judiciary because U.S. Tax Court is not an Article III tribunal, however, rest assured that this distinction will be rarely recognized. Only those fortunate individuals that can afford to pre-pay the alleged deficient amount(s) will be able to invoke Article III protections. Thus, Congress' continued effort to "supplant the system of adjudication in independent Article III tribunals and replace it with a system of 'specialized' legislative courts" will be successful[2]. Northern Pipeline v. Marathon Pipe Line, 458 U.S. 50, 73 (1981).

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[2] Hopefully, one would recognize that this substitution of power through subterfuge not only cloaks the work of an Article I inferior officer as that of an Article III judicial officer, but also aggrandizes power from the Article III tribunal to the legislative court.

III. DECLARING 26 U.S.C. § 7443A (c) UNCONSTITUTIONAL WILL MINIMIZE THE EFFECTS ON THE U.S. TAX COURT

26 U.S.C. § 7443A (c) has only to do with a special trial judge's ability to decide cases, not with hearing them. Under 26 U.S.C. § 7443A (a) and (b), the Chief Judge of the U.S. Tax Court would still be able to assign cases to special trial judges to hear and prepare proposed findings and opinions. The ultimate decision would be reserved for judges of the U.S. Tax Court. This would be the same format that was present before the Tax Reform Act of 1986.

More importantly, eliminating special trial judges' ability to decide cases and restricting them

to the aforementioned tasks will parallel the power of a U.S. Magistrate rather than that of a U.S. District Court judge. United States v. Raddatz, 447 U.S. 667 (1980). Lastly, declaring 26 U.S.C. § 7443A (c) unconstitutional will be consistent with all Supreme Court precedent, including Freytag where the distinction between hearing a case and deciding it was clearly articulated. Freytag v. C.I.R., 501 U.S. 868, 874-875 (1991).

IV. GRANTING SPECIAL TRIAL JUDGES THE POWER TO DECIDE CONSTITUTIONAL OBJECTIONS FURTHER ERODES THE JUDICIAL POWER AND BUILDS CONSTITUTIONAL LAW PRECEDENT ABSENT ARTICLE III ACCOUTREMENTS

In U.S. Tax Court, Petitioner specifically objected to allowing a special trial judge decide the constitutional objections Petitioner set forth because it clearly illustrates the erosion of the judicial power. If a special trial judge is allowed to rule on subject matters clearly outside the province of tax law, such as Due Process, Equal Protection and Separation of Powers as submitted by Petitioner, then surely there can be no "limiting principle".

See, Northern, *supra*.

Despite Article III, section 2's unequivocal language, "The judicial Power shall extend to all Case, in Law and Equity, arising under this Constitution, ..." by virtue of Crawford v. C.I.R., special trial judges now have case law precedent that allows them to decide constitutional law issues[3]. In short, special trial judge's subject matter jurisdiction now equals that of a U.S. District Court judge.

Additionally, this expanded jurisdiction will continue to increase because of the increasing number of litigants that will have their cases decided

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[3] Curiously, the Ninth Circuit cites to Rager v. Comm'r., 775 F.2d 1081, 1083 (9th Cir. 1985) for jurisdictional support, however, Rager was decided before the Tax Reform Act of 1986 which enlarged the special trial judge's power to decide cases.

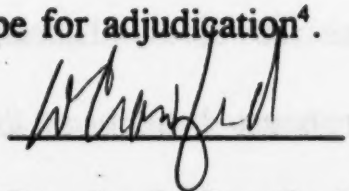
by special trial judges. Because special trial judges decisions are only appealable to the Circuit Court of Appeals in which they sit, rather than the local District Court, a special trial judge's constitutional law analysis will become precedent for all areas of law. The long-term ripple effect of allowing Article I inferior officers to decide issues collateral to their legislative jurisdiction should be readily foreseeable, and must stop.

V. CONCLUSION

The judicial branch is the weakest and the strongest branch of our government. It is the weakest branch because it has no power to act absent a case or controversy. In that regard, a loss of power can and will continue unabated. However,

it is the strongest branch because only it can nullify the acts of both branches by declaring a law unconstitutional.

Here, unlike Freytag, Petitioner duly objected to the constitutionality of 26 U.S.C. § 7443 (c) during his first appearance. Moreover, Petitioner's objections were repeated during the second appearance, submitted and accepted as part of the record. No waiver or jurisdictional problems exist in this case. In sum, the case that Freytag never was, is present and is ripe for adjudication[4].

Respectively submitted, 

Douglas J. Crawford

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[4] Petitioner has purposefully left out analysis that would answer the question(s) presented because petitioner thinks those analyses are better suited for the briefs.